



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215 and 252

RIN 0750-AH47

Defense Federal Acquisition Regulation Supplement: Proposal Adequacy Checklist (DFARS Case 2011-D042)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to incorporate a proposal adequacy checklist for proposals in response to solicitations that require submission of certified cost or pricing data.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011-D042, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2011-D042 under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that

corresponds with "DFARS Case 2011-D042." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011-D011" on your attached document.

- o E-mail: dfars@osd.mil. Include DFARS Case 2011-D011 in the subject line of the message.

- o Fax: 703-614-1254.

- o Mail: Defense Acquisition Regulations System, Attn: Dustin Pitsch, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 703-602-0289.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule supports one of DoD's Better Buying Power initiatives by incorporating the requirement for a proposal adequacy checklist into the Defense Federal Acquisition Regulation Supplement (DFARS) at section 215.408, and an

associated solicitation provision at DFARS 252.215-70XX, to ensure offerors take responsibility for submitting thorough, accurate, and complete proposals. The provision should be included in solicitations that require the submission of certified cost or pricing data.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an Initial Regulatory Flexibility Analysis has been performed and is summarized as follows:

This proposed rule amends the DFARS to add a checklist for DoD contractors to complete under solicitations that require the submission of certified cost or pricing data, if the contracting officer chooses to use the provision. This rule will implement one of DoD's Better Buying Power initiatives.

The objective of the rule is to ensure that offerors submit thorough, accurate, and complete proposals. By completing the checklist, offerors will be able to self validate the adequacy of their proposals. The legal basis for the rule is 41 U.S.C. 1303.

The rule will apply to actions where cost and pricing data is required, at the discretion of the contracting officer. Based on data collected in FPDS-NG for FY2008 - FY2010, there are on average 905 actions per year that met the criteria where the proposal adequacy checklist could be utilized. On average, 420 of those actions were with small business concerns.

The rule imposes no new reporting requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were identified that would meet the objectives of the rule. Excluding the small number of small business concerns that may be subject to the rule would not be in the best interest of the small business concerns or the Government, because the proposal adequacy checklist was created

directly from requirements already in the Federal Acquisition Regulation. While the checklist does not add burden, it provides a useful tool for ensuring proposal adequacy.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011-D042), in correspondence.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0013, entitled "Cost or Pricing Data Exemption Information."

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 215 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Amend Section 215.408 to add new paragraph (3) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) When the solicitation requires the submission of certified cost and pricing data, the contracting officer should include 252.215-70XX, Proposal Adequacy Checklist, in the solicitation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 252.215-70XX to read as follows:

252.215-70XX Proposal Adequacy Checklist.

As prescribed in 215.408(3), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (DATE)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. Completion of this checklist in no way reduces the responsibility to fully comply with all of the requirements of 41 U.S.C. chapter 35, Truthful

Cost or Pricing Data, and any other special requirements of the solicitation.

PROPOSAL ADEQUACY CHECKLIST

	<u>REFERENCES</u>	<u>SUBMISSION ITEM</u>	<u>PROPOSAL PAGE No.</u>	<u>If not provided EXPLAIN (may use continuation pages)</u>
<u>GENERAL INSTRUCTIONS</u>				
1.	Paragraph A(1) FAR 15.408, Table 15-2, Section I	Is there a properly completed first page of the proposal per FAR 15.408 Table 15-2 I.A or as specified in the solicitation?		
2.	Paragraph A(7) FAR 15.408, Table 15-2, Section I	Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the lending contract number and Contracting Officer contact information if known.		
3.	Paragraph A(8) FAR 15.408, Table 15-2, Section I	Does the proposal include identification of any CAS non-compliances, or other estimating deficiencies that may impact the proposed price?		
4.	Paragraph A(8) FAR 15.408, Table 15-2, Section I	Does the proposal disclose any other known activity that could materially impact the costs; such as, existing excess material, changes in production methods, make-or-buy decisions, company re-organizations, new business, or new technology?		
5.	Paragraph B FAR 15.408, Table 15-2, Section I	Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?		
6.	FAR 15.403-1(b)	Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403-1(b)? If so, is supporting documentation		

	<u>REFERENCES</u>	<u>SUBMISSION ITEM</u>	<u>PROPOSAL PAGE No.</u>	<u>If not provided EXPLAIN (may use continuation pages)</u>
		included in the proposal?		
7.	Paragraph C(2)(i) FAR 15.408, Table 15-2, Section I	Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data?		
8.	Paragraph C(2)(ii) FAR 15.408, Table 15-2, Section I	Does the proposal disclose the nature and amount of any contingencies included in the proposed price?		
9.	Paragraph D FAR 15.408, Table 15-2, Section I	Does the proposal explain the basis of all cost estimating relationships (CERs) (labor hours or material) proposed on other than a discrete basis?		
10	Paragraphs D and E FAR 15.408, Table 15-2, Section I	Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system.)		
11	Paragraph D FAR 15.408, Table 15-2, Section I	Is total price by cost element provided by year? Identify if by Calendar Year (CY) or Government Fiscal Year (GFY) or both, as required.		
12	Paragraphs D and E FAR 15.408, Table 15-2, Section I	If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data?		

	<u>REFERENCES</u>	<u>SUBMISSION ITEM</u>	<u>PROPOSAL PAGE No.</u>	<u>If not provided EXPLAIN (may use continuation pages)</u>
13	Paragraph E FAR 15.408, Table 15-2, Section I	Are CLIN prices by cost element provided by year? Identify if by CY or GFY or both, as required.		
14	Paragraph E FAR 15.408, Table 15-2, Section I	Are recurring and non- recurring costs segregated at both the CLIN/sub-CLIN and total cost levels?		
15	Paragraph F FAR 15.408, Table 15-2, Section I	Does the proposal identify any incurred costs for work performed before the submission of the proposal?		
16	Paragraph G FAR 15.408, Table 15-2, Section I	Is there a Government forward pricing rate agreement (FPRA)? If so, identify and include.		
<u>COST ELEMENTS</u>				
MATERIALS AND SERVICES				
17	Paragraph A FAR 15.408, Table 15-2, Section II	Does the proposal include a description of supplies or services and the basis on which the supply or service meets the Government's requirements?		
18	Paragraph A FAR 15.408, Table 15-2, Section II	Does the proposal include a consolidated summary of individual material and services to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price.		
SUBCONTRACTS (Purchased materials or services)				
19		Does the proposal identify those actions for which assist		

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		audits have been requested by the contractor or a subcontractor and identify the request date and scheduled receipt date?		
20	FAR 15.404-3 (c)	Per the thresholds of FAR 15.404-3 (c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's proposal(s)?		
21	Paragraph A FAR 15.408, Table 15-2, Section II	Is the subcontractor Price/Cost Analysis establishing the reasonableness of each proposed subcontract included with the proposal?		
22		If the offeror's Price/Cost Analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of Price/Cost Analysis, and submission of the Price/Cost Analysis?		
COMMERCIAL ITEM DETERMINATIONS				
23	FAR 2.101 FAR 15.403-1 (b) (3) or (b) (5)	Are commercial items being proposed either at the prime or subcontractor level that would be exempt from certified cost or pricing data requirements?		
24	FAR 2.101	Has the contractor specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition?		

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25	FAR 2.101 FAR 15.403-1	For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the contractor classify the modification(s) as either— <ul style="list-style-type: none"> • A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or • A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)? (see note below) 		
26	FAR 2.101	For proposed commercial items "of a type", or "evolved" or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
27	FAR 15.402(a)(2) FAR 15.403-1(c)(3)(ii) FAR 15.403-3(c) FAR 15.404-3(b) FAR 15.404-3(c) FAR 15.406-2	Does the proposal include a determination of price reasonableness for all commercial items offered?		
ADEQUATE PRICE COMPETITION				
28	Paragraph A(1) FAR 15.408, Table 15-2, Section II	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of		

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		price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?		
INTERORGANIZATIONAL TRANSFERS				
29	Paragraph A. (2) FAR 15.408, Table 15-2, Section II	For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15-2?		
30	FAR 31.205-26(e) FAR 15.403-1	For inter-organizational transfers proposed at price in accordance with FAR 31.205-26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403-1?		
DIRECT LABOR				
31	Paragraph B FAR 15.408, Table 15-2, Section II	Does the proposal include a time phased (i.e.; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied.		
32	Paragraph B FAR 15.408, Table 15-2, Section II	For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, task descriptions, Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing?		
33	Paragraphs B and C, FAR 15.408, Table	Does the proposal include all rates and factors by year that are utilized in the		

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	15-2, Section II	development of the proposal and the basis of those rates and factors (FPRA/FPRP)? The Offeror shall identify the official submittal of such rate and factor data.		
34	FAR subpart 22.10	If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute?		
<u>INDIRECT COSTS</u>				
35	Paragraph C FAR 15.408, Table 15-2, Section II	Does the proposal indicate the basis of estimate for proposed indirect costs? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.)		
<u>OTHER COSTS</u>				
36	Paragraph D FAR 15.408, Table 15-2, Section II	Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)?		
37	Paragraph E FAR 15.408, Table 15-2, Section II	If royalties exceed \$1,500 does the proposal provide the information/data identified by Table 15-2?		
38	Paragraph F FAR 15.408, Table 15-2, Section II	When facilities capital cost of money is proposed, does the proposal include submission of Form CASB-CMF or reference to an FPRP/FPRA and show the calculation of the proposed amount?		

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<u>FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES</u>				
39	FAR 15.408, Table 15-2, Section III	Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15-2 III? (or alternative format if specified in the RFP)		
40	Paragraph B FAR 15.408, Table 15-2, Section III	If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15-2.III.B?		
41	Paragraph C FAR 15.408, Table 15-2, Section III	For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15-2.III.C?		
<u>OTHER</u>				
42	FAR 16.4	If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price?		
43	FAR 15.404- 4(c)(4)(i)	Is proposed fee in accordance with statutory guidance?		
44	FAR 16.203- 4(a)(1)	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the proposed indices?		
45	FAR 32.1000	If the offeror is proposing Performance-Based Payments have they provided an expenditure profile, proposed events and their projected dates, proposed values for each event, completion		

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		criteria, and identification of which events are severable or cumulative?		
46	FAR 15.408 (n)	Excessive Pass-through Charges- Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?		
47		Does the proposal identify the location and point of contact for any certified cost or pricing data referenced in, but not provided with, the proposal?		

(End of provision)

[FR Doc. 2011-30907 Filed 12/01/2011 at 8:45 am; Publication

Date: 12/02/2011]